

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4211 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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MR SHAH

Versus

SECRETARY

Appearance:

MR DS VASAVADA for Petitioners

MR VIMAL PATEL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/09/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner No.1, a Deputy Engineer of the Gujarat Electricity Board (hereinafter referred to as 'Board'), filed this Special Civil Application and challenged therein the action of the respondent not to grant him higher grade with effect from 9th February 1981

in pursuance of General Standing Order (GSO) No.253,
dated 26th December 1973.

3. Under the said order, it has been provided that an employee who has completed nine years service in the same cadre/post in a particular pay scale (pre-revised or revised) and who has not got promotion for no fault of his own on 1.8.1972 for want of clear vacancy or for want of channel of promotion or who may complete nine years service in the same cadre/post in a particular pay scale after 1.8.1972 shall be entitled to the promotion to the next higher pay scale from 1.8.1972 or from the date following the date on which he completes nine years service in the cadre/post as the case may be and his pay shall be fixed in that grade in accordance with S.R.No.102(b) irrespective of the fact whether suitable vacancies in the next higher post are available or not, subject to condition that the employee is otherwise fit for promotion on the basis of overall performance and he has passed the necessary examinations etc. The facts which are not in dispute are that the petitioner No.1 entered in the services of the Board as Junior Engineer on 12th March 1970. He was promoted to the post of Deputy Engineer on 9th February 1972 and in that cadre/post, he completed nine years' service on 9.2.81. He opted for benefit of higher pay scale from 9.2.81, but under the order dated 3.10.83, he was given nine years' benefit from 1.1.83, which gave rise to this Special Civil Application before this Court.

4. The respondent, in reply, has come up with the case that the record of the petitioner No.1 was not satisfactory. The statement showing details of service record of the petitioner No.1 has been enclosed to the reply and therefrom, I find that the petitioner No.1's service record for the period from 1972-73 to 1.9.82 was 'fairly good', 'satisfactory' and 'good'. When the overall performance of the petitioner No.1 for all these years was stated to be fairly good, satisfactory or good, I fail to see how it can be said to be unsatisfactory service record to the extent where the petitioner No.1 has to be denied the benefit of higher pay scale from the date of completion of his nine years' service. The criteria for giving of the higher pay scale from the date of completion of nine years' service is not merit or selection, but it is seniority-cum-merit and as such, even if the petitioner No.1's work is average, he deserves to be given those benefits.

5. In the result, this Special Civil Application succeeds and it is hereby declared that the denial of

benefits of higher pay scale to the petitioner No.1 from 9th February 1981 is illegal and arbitrary. The respondent-Board is directed to reconsider the case of petitioner No.1 for giving him the benefits of higher pay scale from 9.2.81 and to pass appropriate order and to give him all the consequential benefits following therefrom. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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(sunil)